IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 565 OF 2005

IN

SUIT NO. 272 OF 2005

Poonam Property Co-op.
Housing Society Ltd., .. Plaintiffs.

vs.

Girija Shankar Lakhotia .. Defendant.

Mr. Manoj Dalvi i/by Banatwalla & Co.
for plaintiffs.
Ms. Hina Mehta for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present suit is filed for the recovery of a sum of Rs. 51,582.81. The claim arises under five dishonoured cheques of Rs. 9,732.60 each with interest. It is the case of the plaintiffs that the defendants have issued the cheques towards the society's dues to the plaintiff society. However, after encashing one cheque the remaining five cheques as set out in the particulars of claim are dishonoured.

2. The learned counsel for the defendants drew my attention to the two orders passed by the Assistant Registrar which are annexed at Exhibits A and B to the affidavit in reply and contended that the application for recovery certificate under section 101 of the Maharashtra Co-operative Societies Act, has been rejected and, therefore, the plaintiffs are not entitled to the said amount. I have perused both the orders at Exhibits A and B. Both the orders are ex facie baseless and without any merit. The aforesaid orders are passed only on the ground of non-supply of relevant documents. My attention is also drawn to the fact that the orders are passed in 2001 whereas the cheques are issued in 2004 and, therefore, both the orders are irrelevant for the determination of the issue which is the subject matter of the suit and the said claim under section 101 of the Maharashtra Co-operative Societies Act, 1960 was not made in respect of the dishonoured cheques which are subject matter of the present suit. I am of the further opinion that the defence of the defendants that the suit is not maintainable by virtue of the orders passed by the Assistant Registrar has no merit and is bogus and moonshine. The defendant contends that he has himself carried out the repairs and is not liable to make payment to the society. In view of the fact that he himself has issued the cheques which are

dishonoured, the aforesaid defence has no merits. The learned counsel for the defendant states that the cheques were issued under economic duress. However, there is no material whatsoever produced to show that there is any such economic duress. On the contrary, record shows that the cheque were issued in the year 2004. In the light of the aforesaid, there is no defence in the present case. Suit is accordingly decreed as prayed. Refund of Court fee as per rules.